

to the evidence of Mr. Capron and Mr. Lansdale upon this point, that the complainant is entitled to be credited at the rate of \$300 per annum, for entertaining the proprietors and others at the factory, during the period he lived there as its agent, or rather, from the 1st of July, 1832, to July, 1839. The agreement under date the 16th of October, 1832, says, expressly, that he shall be indemnified for this expense, and the witness referred to proves, that \$300 per annum would be no more than a reasonable allowance therefor.

The complainant's salary, however, cannot be credited to a period subsequent to the 6th of July, 1839, when he resigned, as shown by a letter of that date; and, I can see no ground upon which he can be allowed a higher rate of compensation, as agent, than \$1000 a year—that being the sum named in the agreement of October, 1822, signed by the complainant and the proprietors.

These are all the items of surcharge and falsification specified in the pleadings, and to these the parties must be confined. The case will, therefore, go to the Auditor, with directions to state an account accordingly, preparatory to a final decree. The settlement itself must stand, because I do not think the charge of fraud is established, and such a decree will be passed, when the account comes to be stated, as the justice of the case may require.

I do not think the exceptions to the evidence of Benjamin Williams, Joseph B. Williams and George H. Williams have been sustained, assuming them to be legatees under the will of Mrs. Weld. The plaintiff examined them upon the *voir dire*, and they denied any interest in the event of the suit; and having elected to take this course, I think he is precluded from resorting to any other mode to show their interest. This doctrine, I think, is established by the passages referred to in 1 *Greenleaf on Evidence*; and also by authorities collected in the *Notes to 1 Starkie on Evidence*, page 124. The exceptions to the evidence of George Williams and Nathaniel Williams, I do not understand to be much insisted on, and certainly, I can see no ground upon which they can be excluded.